



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2018-0564, FRL 8921-02-Region 2]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the state plan submitted by New York State to implement and enforce Emission Guidelines (EG) for existing large municipal waste combustor (MWC) units. The state plan is consistent with the amended EG promulgated by the EPA on May 10, 2006. New York's plan establishes emission limits and other requirements for the purpose of reducing emissions of lead, mercury, cadmium, organics, hydrogen chloride, and other air pollutants from large MWC units throughout the state. New York submitted its plan to fulfill the requirements of certain sections of the Clean Air Act.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain materials listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2018-0564. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional available information.

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the Supplementary Information section:

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I. What action is the EPA taking?

The EPA is approving New York's revised state plan, submitted on July 12, 2013, for the control of air emissions from existing large municipal waste combustor (MWC) units throughout the state, except for any existing large MWC units located in Indian Nation Land. In accordance with the Clean Air Act ("CAA" or the "Act"), New York previously submitted a state plan on December 15, 1997, as supplemented on June 22, 1998, which was approved by the EPA on August 4, 1998. *See* 63 FR 41427. New York also submitted a revised state plan on October 7, 1998, as supplemented on November 5, 1998, which was approved by the EPA on February 9, 1999. *See* 64 FR 6237. New York submitted its July 12, 2013 revised plan to fulfill the requirements of sections 111(d) and 129 of the CAA. The revised state plan adopts and implements the Emission Guidelines (EG) amended by the EPA on May 10, 2006 applicable to existing large MWC units and establishes revised emission limits and other requirements for units constructed on or before September 20, 1994. *See* 71 FR 27324 (May 10, 2006); 40 CFR section 60.32b(a). New York's revised state plan regulates all the existing units designated as large MWCs by the amended EG with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction commenced on or before September 20, 1994. This

approval, once effective, will render New York's revised large MWC rules included in the state plan federally enforceable.

II. What are the details of the EPA's action?

On July 12, 2013¹, the New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA its sections 111(d) and 129 state plan to implement the EPA's amended EG for existing large MWC units located in New York state. New York has incorporated by reference the applicable requirements of the amended EG in Part 200 of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), entitled, "General Provisions." The amended regulation became effective on October 20, 2007. New York will enforce the requirements under Part 201, entitled "Permits and Registration." By incorporating the requirements of the amended EG into Part 200, NYSDEC has the authority to include them as applicable requirements in the permits of subject emission sources. As a result, the Part 200 requirements are enforceable by New York and become federally enforceable once the state plan is approved by the EPA.

New York's revised state plan includes all of the EPA's required elements as described in the amended EG and 40 CFR subpart B, as summarized herein:

(1) A demonstration of the state's legal authority to implement the CAA sections 111(d) and 129 state plan;

(2) State rules adopting the amended EG (6 NYCRR Part 200) as the mechanism for implementing and enforcing the state plan;

¹In an email dated December 6, 2017, the New York State Department of Environmental Conservation (NYSDEC) provided a copy of the New York State Office of Attorney General opinion dated June 9, 1980, finding that New York state administrative agencies are authorized to incorporate by reference federal statutes and regulations that are applicable to the state, and that such action is not prohibited by the New York State Constitution.

(3) An inventory of seven known large MWC facilities, including eighteen large MWC units, along with an inventory of their air pollutant emissions (*see* section C of New York's state plan);

(4) Emission limits, emission standards, operator training and qualification requirements, and operating limits that are at least as protective as the amended EG;

(5) Enforceable compliance schedules as indicated in the amended EG.

Compliance with revised emission limits (*see* 40 CFR 60.39b) was required as expeditiously as practicable, but not later than April 28, 2009, except as noted in 40 CFR 60.39b(g)(2) for a facility that was planning an extensive emission control system upgrade that petitioned the Administrator for a longer compliance schedule. If approved by the Administrator, the longer compliance schedule may have been extended no later than May 10, 2011. If no plan for implementing the amended EG was approved by the EPA, all MWC units that meet the applicability standards set forth in 40 CFR 60.32b must have been in compliance with all requirements of the amended EG no later than May 10, 2011 (*see* 40 CFR 60.39b(h)).

(6) Testing, monitoring, reporting, and recordkeeping requirements for the designated facilities;

(7) Records of the public hearing on the revised state plan; and,

(8) Provisions for annual state progress reports to the EPA on implementation of the revised state plan.

The EPA reviewed New York's revised state plan for approval against the following criteria: 40 CFR 60.23 through 60.26, "Subpart B - Adoption and Submittal of State Plans for Designated Facilities," "Subpart Cb - Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994," and 40 CFR part 62 subpart A, "General Provisions" for "Approval and Promulgation of State Plans for Designated Facilities and Pollutants."

On September 10, 2018 (*see* 83 FR 45589), the EPA proposed to determine that New York's revised state plan for large MWC units includes all the required state plan elements described in the amended EG and, therefore, the EPA proposed approval of New York's July 12, 2013 state plan submittal.

III. What comments were received in response to the EPA's proposed action?

In response to the EPA's September 10, 2018 (*see* 83 FR 45589) proposed rulemaking on New York's state plan submission for existing large MWCs, the EPA received two comments during the 30-day public comment period. The first public comment, posted on October 9, 2018, supports the EPA's proposed rulemaking to approve New York's state plan. Also, the EPA has determined that the second public comment, posted on October 17, 2018, is outside the scope of our proposed action and fails to identify any material issue necessitating a response. The second public comment does not raise any issues germane to the EPA's proposed action. For these reasons, the EPA will not provide a specific response to the second public comment. The specific public comments may be viewed under Docket ID Number EPA-R02-OAR-2018-0564 on the <http://www.regulations.gov> website.

IV. What is the EPA's conclusion?

The EPA has determined that New York's revised state plan meets all the applicable approval criteria as discussed above and, therefore, the EPA is approving New York state's CAA sections 111(d) and 129 revised state plan for existing large municipal waste combustor units.

V. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing regulatory text that includes the incorporation by reference of Table 2 of subdivision 200.10(b) at Part 200 of Title 6 NYCRR (effective October 20, 2007) which is part of the CAA section 129 plan

applicable to existing large MWCs in New York. The regulatory provision at 6 NYCRR section 200.10(b), entitled, “Delegated Federal New Source Performance Standards of 40 CFR 60,” incorporates by reference the Emission Guidelines (EG) for existing large MWCs, promulgated by the EPA at 40 CFR part 60 subpart Cb, and establishes emission standards and compliance times for the control of lead, mercury, cadmium, organics, hydrogen chloride, and other air pollutants from certain MWCs that commenced construction on or before September 20, 1994. The EPA has made, and will continue to make, Table 2 of subdivision 200.10(b) at Part 200 of Title 6 NYCRR generally available electronically through *www.regulations.gov*, Docket No. EPA-R02-OAR-2018-0564 and in hard copy at the EPA Region 2 office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the state plan, have been incorporated by reference by EPA into that plan, and are fully federally enforceable under the CAA as of the effective date of the final rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7411(d); 40 CFR part 60 subparts B and Cb; and 40 CFR part 62 subpart A; and 40 CFR 62.04. Thus, in reviewing CAA section 111(d)/129 plan submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action, as finalized, merely approves state law that meets federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action, as finalized:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and Executive Order 13563 (76 FR 3821, Jan. 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an “economically significant” regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

In addition, this final rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, Nov. 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, which was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the Second Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

August 26, 2021.

Dated:

Walter Mugdan,
Acting Regional Administrator,
Region 2.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as set forth below:

PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR

DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart HH-New York

2. Amend §62.8103, by adding paragraphs (d) through (g) to read as follows:

§ 62.8103 Identification of plan.

* * * * *

(d) Identification of plan: On July 12, 2013, the New York State Department of Environmental Conservation (NYSDEC) submitted to the Environmental Protection Agency (EPA) a Clean Air Act section 111(d)/129 revised plan, and the associated Table 2 of subdivision 200.10(b) at Part 200 of Title 6 NYCRR, addressing 40 CFR part 60 subpart Cb, “Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994,” as amended on May 10, 2006. The plan includes the regulatory provisions cited in paragraph (g) of this section, which the EPA incorporates by reference.

(e) Identification of sources: The plan applies to all existing facilities in New York with a municipal waste combustion capacity greater than 250 tons per day of municipal solid waste for which construction commenced on or before September 20, 1994, and which are subject to 40 CFR part 60 subpart Cb.

(f) Effective date: The effective date of the plan for **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(g) Incorporation by reference:

(1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. section 552(a)(1) and 1 CFR part 51. The material is available from the sources identified elsewhere in this paragraph. It may be inspected or obtained from the EPA Region 2 Office, 290 Broadway, 25th Floor, New York, New

York 10007-1866, 212-637-3378. It may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html

(2) State of New York, Department of State, Albany, New York 12231;
<https://dos.ny.gov/state-register> .

(i) 6 NYCRR sec. 200.10(b)-Cb: Official Compilation of (New York) Codes, Rules and Regulations; Title 6 –Environmental Conservation; Part 200– General Provisions; Section 200.10 – Federal standards and requirements; Paragraph (b) – Table 2– Delegated Federal New Source Performance Standards of 40 CFR 60, entry Cb, Large Municipal Waste Combustors That are Constructed on or Before September 20, 1994; effective September 4, 2019 (original effective date: October 20, 2007)

(ii) [Reserved]

[FR Doc. 2021-19005 Filed: 9/2/2021 8:45 am; Publication Date: 9/3/2021]